

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

The Commission's Forfeiture Policy
Statement and Amendment of Section 1.80
of the Rules To Incorporate the
Forfeiture Guidelines

CI Docket No. 95-6

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**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") herewith submits its reply to comments on the above-captioned *Notice*.¹ In its original comments in this proceeding, PCIA agreed that forfeiture standards can promote uniformity in the application of forfeitures involving similarly situated carriers, but argued that the *Policy Statement* did not adequately address disparities in the size of land mobile radio operators as compared to other common carriers. As discussed below, PCIA's proposal to differentiate between classes of carriers was widely supported and should be adopted.

As PCIA and others have noted in their comments, Part 22 CMRS licensees face proposed forfeitures schedules that are *ten times higher* than licensees in the "Other" category, including many comparable Part 90 licensees.² As AMTA states, small common

¹ The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules To Incorporate the Forfeiture Guidelines, CI Docket No. 95-6 (Feb. 10, 1995) ["*Notice*"].

² As PCIA has related in its prior pleadings in GN Docket No. 93-252, the disparity between the forfeitures for Part 22 and Part 90 CMRS licensees raises a substantial question as to whether the Commission has fulfilled its obligations under the regulatory parity provisions of the *Omnibus Budget Reconciliation Act*.

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carriers "possess neither the national importance, nor the market power, nor the financial wherewithal of an [large interexchange or local exchange carrier]" and smaller common carriers "do not provide an essential, monopoly service on which vast segments of the population are dependent, wherein an FCC violation may have a far-reaching impact."³ The proposed forfeiture guidelines therefore result in treating many small common carriers, which include hundreds of paging operators with fewer than 1,000 customers, no differently than regional local exchange telephone companies with millions of customers and "will clearly be financially ruinous for many small carriers."⁴

While PCIA and others recognize that the statutory maximums for common carriers are higher than for other classes of carriers, Mobilemedia appropriately notes that Section 503 should only be read as stating that "Congress *permits*, but does not *require* higher forfeiture amounts for common carriers."⁵ As Emery notes, the logical explanation for the higher statutory maximum forfeitures for common carriers "is to provide a meaningful deterrent for those very few common carriers . . . that have such high earnings that an extremely steep forfeiture is necessary to have a deterrent effect."⁶ Quite simply, "the

³ AMTA Comments at 5.

⁴ Emery Telephone Comments at 12; *see also* Mobile Phone of Texas, Inc. Comments at 12; Harrisonville Telephone Company Comments at 12.

⁵ MobileMedia Communications Inc. Comments at 4.

⁶ Emery Telephone Comments at 20; *see also* Mobile Phone of Texas, Inc. Comments at 20; Harrisonville Telephone Company Comments at 20.

Commission should not treat all carriers as if they had the resources of [a large interexchange carrier]."⁷

Under the circumstances, PCIA and others have strongly urged the Commission to consider revisions to the forfeiture guidelines that would result in less draconian fines for smaller carriers. Specifically, the Commission should either treat CMRS carriers in the "other" category or establish a new CMRS category altogether.⁸ The base forfeitures currently set for "other" licensees provides the Commission with more than sufficient penalty levels to appropriately fine CMRS licensees.

PCIA supports the Commission's goal in this proceeding of ensuring comparable treatment of similarly situated licensees under the forfeiture policies. Unfortunately, as PCIA and others have argued, the *Policy Statement* will not provide uniform or equitable treatment for many CMRS carriers. The Commission should instead treat all CMRS carriers under the Part 90 forfeiture limits, which would further the Commission's achievement of its

⁷ Emery Telephone Comments at 19; *see also* Mobile Phone of Texas, Inc. Comments at 19; Harrisonville Telephone Company Comments at 19.

⁸ Emery Telephone Comments at 20-21; Harrisonville Telephone Company Comments at 20-21; MobileMedia Communications Inc. Comments at 2-4; Mobile Phone of Texas, Inc. Comments at 20-21; WJG Maritel Comments at 4-5.

regulatory parity goals, be consistent with the Section 503 mandates, and more effectively achieve the public interest.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

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